

Bathae :: Dunne :: LLP

FILED UNDER SEAL

May 31, 2023

Via CM/ECF

Re: Klein v. Meta Platforms, Inc., No. 3:20-cv-08570-JD (N.D. Cal.)

Dear Judge Donato:

Advertiser Plaintiffs (“Advertisers”) respectfully request that the Court enter an order compelling Mark Zuckerberg’s deposition for an additional three hours. As set forth in this letter, Zuckerberg has unique, personal knowledge about issues pertinent to Advertisers’ case. On March 17, 2023, the Court entered an order limiting Zuckerberg’s deposition to three hours for both classes, and stated, “if plaintiffs have a good-faith basis for seeking additional time, they may advise the Court.” Dkt. 477. On May 19, after deposing Zuckerberg for 90 minutes three days prior, Advertisers sent Meta a letter requesting additional time with Zuckerberg and setting forth the reasons why. The parties met and conferred on May 31 and reached impasse.

On May 16, 2023, Advertisers deposed Mark Zuckerberg for slightly under 90 minutes before Meta’s counsel cut off questioning. *See* Zuckerberg Tr. 144:6-8. Most of this time was devoted to an attempt, frustrated by Meta’s counsel, to elicit Zuckerberg’s testimony on an anticompetitive—and potentially criminal¹—

Specifically, in 2016, Meta’s advertising hegemony was threatened by nascent rival Snapchat, which was aggressively expanding its advertising business ahead of a 2017 IPO.

To counteract this competitive threat,

¹ It is Advertisers’ position—backed up by voluminous evidentiary background and analysis, which Advertisers would welcome the opportunity to share with the Court should Meta dispute any aspect of Advertisers’ contention—that Meta’s didn’t just harm competition, but criminally violated 18 U.S.C. § 2511(1)(a) and (d) by

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

However, when Advertiser counsel sought to examine Zuckerberg on some of these documents—including [REDACTED]

[REDACTED]—Meta’s counsel stepped in. From the first introduction of the [REDACTED], Meta’s counsel [REDACTED]

[REDACTED]

Advertisers did not have adequate time to examine Zuckerberg on important documents and subjects about which he plainly had (and has) personal, unique knowledge.² And in what time Advertisers did have—and the documents that were introduced to Zuckerberg within it—Meta’s counsel interfered with the witness’s testimony, including repeated coaching with baseless protective order objections. Advertisers respectfully request three hours of additional deposition time with Mark Zuckerberg—which can be done remotely if that is Meta’s wish.

² As Meta correctly points out in its fictional, race-to-the-courthouse motion for a protective order, Dkt. 564—filed eleven minutes after a meet-and-confer on Advertisers’ letter motion at which Meta never once mentioned it would be seeking affirmative relief—Advertisers do indeed have remaining questions regarding, for example, Zuckerberg’s direct involvement in an anticompetitive deal with Netflix/Reed Hastings and in Meta’s market division agreement with Google, beyond Advertisers’ additional questions about Zuckerberg’s personal involvement in his company’s [REDACTED].

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Respectfully submitted,

By: Brian J. Dunne
*On Behalf of Interim Co-Lead Counsel
for the Advertiser Classes*

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FILER ATTESTATION

I am the ECF user who is filing this document. Pursuant to Civil L.R. 5-1(h)(3), I hereby attest that each of the other signatories have concurred in the filing of the document.

Dated: May 31, 2023

By: /s/ Brian J. Dunne
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